

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

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In the Matter of:

DELPHI CORPORATION, et al.

Debtors.

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United States Bankruptcy Court

One Bowling Green

New York, New York

March 11, 2009

10:17 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

FINAL HEARING re Order Under 11 U.S.C. §§ 105, 363(B)(1), 1108,
and 1114(D) (i) Provisionally Confirming Debtors' Authority to
Terminate Employer-Paid Post-retirement Health Care Benefits
and Employer-Paid Postretirement Life Insurance Benefits for
Certain (A) Salaried Employees and (B) Retirees and Their
Surviving Spouses; (ii) Directing Appointment of Committee of
Retired Employees with Limited Scope, and (iii) Setting March
11, 2009 Final Hearing

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Okay. Delphi Corporation.

MR. BUTLER: Your Honor, good morning. Jack Butler, Kayalyn Marafioti and Al Hogan here on behalf of Delphi Corporation for this continuation of the OPEB termination matter. This was -- we filed the docket -- we filed, Your Honor, an agenda for today's hearing at docket number 16442. The Court entered a prior order, a provisional order, at docket number 16380 relating to the motion that we filed at docket number 14705.

Your Honor, in connection with the provisional order that Your Honor entered, Your Honor appointed a retirees' committee for certain limited purposes as set forth in paragraphs 9 through 12 of that order. Included in that order was a provision in paragraph 11 that the retirees' committee would file a report on March 6th setting forth the results of the retirees' committee's scope of work. And to the extent that the report asserts that there was sufficient and competent evidence not presented at the prior hearing to establish consistent with the Court's bench ruling and applicable that salaried OPEB benefits have vested with respect to any eligible salaried employee or group thereof -- retiree or group thereof, the report shall set forth those contentions and the basis therefor with specificity.

Today's hearing, Your Honor, under paragraph 12 of

1 that order, is being held to consider the retirees' committee's
2 report and the debtors' response to that report and including
3 whether any salaried benefits have vested with respect to any
4 eligible salaried employee or group thereof as identified in
5 the retirees' committee's report.

6 And, Your Honor, as I have indicated, the retirees
7 did file a report -- the retirees' committee did file a report
8 and a series of exhibits in connection with that. We filed --
9 and also filed a response. In connection with the report, and
10 let me just -- I think probably the efficient way to do this is
11 just deal with the supplemental exhibits that the parties have
12 reviewed together for this hearing. There are fourteen of
13 those exhibits, supplemental exhibits. Included in that is the
14 report that was filed and some supplements to the report that
15 were filed by the retirees' committee.

16 The debtors have objected on hearsay grounds to the
17 documents in Exhibits A through G of the retirees' committee
18 report which is proposed Supplemental Exhibit 2. These
19 exhibits consist of benefit books and plan communications from
20 General Motors or Frigidaire or third party administrators to
21 retirees. In settlement of that objection, the debtors and the
22 committee have agreed that these documents are properly
23 admissible to show that the communications existed and were
24 sent to certain retirees by General Motors or Frigidaire or
25 third party administrators. And that settles that objection.

1 There are fourteen supplemental exhibits in total to
2 which, I think, there is no objection for their admission.
3 That includes -- and I'll just run through them because we're
4 going to be dealing with them in argument today, I believe.
5 Number one is the provisional order that Your Honor entered at
6 docket number 16380. Number 2 is the supplement and report in
7 connection with the retirees' committee. And that is at docket
8 number 16430. Number 3 is the debtors' response at docket
9 number 16446. Supplement Exhibit 4 is the U.S. matters --
10 Employees Matters Agreement between General Motors and Delphi
11 dated December 22, 1998. Exhibit number 5 -- Supplemental
12 Exhibit number 5 is the letter from Delphi Corporation that was
13 sent to Delphi Health and Life program participants on February
14 26th, 2009. This is the letter that, Your Honor, we indicated
15 at the last hearing we would send. Supplemental Exhibit number
16 6 is the posting that Delphi Corporation made on its official
17 site for these cases at www.delphidocket.com. Supplemental
18 Exhibit number 7 is the request the retirees' committee made
19 for production of documents that was received on February 27th.
20 And our response is Supplemental Exhibit number 8. Our
21 response was presented on March 3rd. And we have, as Exhibit
22 number 9, the proposed form of salaried OPEB termination order
23 that we've submitted to the Court and the parties. This is not
24 a consent order; this is the debtors' proposed form of order.
25 When we get to that part of the hearing, Your Honor, I would

1 indicate that we also have an additional paragraph regarding
2 claims issues that we've reviewed with the creditors'
3 committee's counsel which I'll address at that point in time.
4 But that's a carryover from the prior hearing.

5 Exhibit numbers 10 and 11 are certain provisions from
6 the plans having to do with the vested companies and the plan
7 acting as a substitute for COBRA and the effect of someone
8 electing COBRA in connection with the plan provisions. And
9 Exhibits 12 and 13 are portions of the Internal Revenue Code,
10 one dealing with the so-called lifetime COBRA coverage, which
11 is Exhibit 12. And Exhibit 13 is the relevant portions of the
12 Internal Revenue Code as they were amended by the stimulus bill
13 passed by the current Congress last month which provided
14 certain additional paths and coverages to health care tax
15 credits that are now effective over the last thirty days and
16 which were filed subsequent to the debtors' filing their
17 motion.

18 And finally, Exhibit 14 is an IRS private letter
19 ruling that was referred to in the prior hearing dated April
20 22, 2004.

21 Those are the supplemental exhibits, Your Honor, for
22 today's hearing, 1 through 14. I'd move their admission.

23 THE COURT: Okay. Was that a correct summary?

24 MR. CORNELL: Yes, Your Honor.

25 THE COURT: All right. So they're admitted.

1 (Debtors' Supplemental Exhibits 1 through 14 were hereby
2 received into evidence as of this date.)

3 MR. BUTLER: Your Honor, I think probably the
4 appropriate thing to do now, depending on what Your Honor's
5 preferences are, would be to turn to the retirees' committee
6 and have them present their report. That's the primary purpose
7 of the hearing.

8 THE COURT: Okay.

9 MR. CORNELL: Good morning, Your Honor. Trent
10 Cornell on behalf of the retiree committee. As Mr. Butler set
11 out on March 6th, 2009, we did file a supplemental report. We
12 are still getting information in but in the time period
13 allotted, we did get some new documentation which has been
14 presented to the report and has been tendered into evidence
15 pursuant to the agreement with Skadden Arps.

16 Your Honor, when we had appeared last time, the
17 debtors had accused us of cherry picking documents. We
18 responded that we really didn't have a lot of documents at that
19 point. Well, now we've actually come to some conclusions as to
20 plans and what GM was telling people for a period of time. And
21 what we've established is that from 1974 through 1985, GM
22 promised lifetime benefits at GM's cost without reservation.

23 Those benefits vested in part during that eleven-year
24 period because part of the issue in the '74 document was that
25 there was vesting upon ten years of participation or service.

1 One of the issues, Your Honor, that you had raised
2 last time is whether Second Circuit law would apply or whether
3 Your Honor should apply the Sixth Circuit law of the Sprague
4 case. And, of course, the debtors are now responding saying
5 there's a res judicata issue as well. We have gone through the
6 cases that show that, first off, it is Second Circuit law that
7 applies and, in fact, the debtor agrees with that.

8 THE COURT: Yeah. I agree with that, too.

9 MR. CORNELL: And the next issue then is, under the
10 Second Circuit law, is there vesting. And we've cited the
11 Devlin case; we've cited the Pfeiffer case, cases that we had
12 cited previously. But now we went through and there's a
13 comparison of the language from Devlin to the language that we
14 have in the '74, the 1980, 1985 summary plan descriptions that
15 were tendered to all of the GM employees. We also have other
16 documents that were sent on an annual basis, again, promising
17 lifetime benefits at GM's cost without reservation. So at that
18 time period, we have vesting. It's not sort of vested. They
19 were vested. The only issue that the debtors have responded
20 with, of course, is Sprague. And look at Sprague and there's
21 res judicata. Well, Sprague is a Sixth Circuit case. They're
22 talking also about a virtual representative and I'm not sure
23 that that actually even works after the decision that came down
24 from the Supreme Court in Taylor v. Sturgell. It can be found
25 at 128 Supreme Court 2161 (2008).

1 But the real meat of the issue is does Sprague apply.
2 And, Your Honor, Sprague can't apply because we are in the
3 Second Circuit and we're looking at Second Circuit law because
4 the debtors chose to file this case in the Second Circuit.

5 THE COURT: But I think there are a couple of
6 different issues there, aren't there? Ultimately, it seems to
7 me now and it seemed to me at the last hearing that while there
8 is language in the Second Circuit cases, starting with
9 Wingspread, that suggest that the Second Circuit on this issue,
10 and I'm leaving aside the promissory estoppel issue that was
11 also addressed in Sprague 'cause I think there is a legitimate
12 standard difference there, but on this issue as actually
13 applied, I don't really see where the Sixth Circuit took an
14 approach that was different than the Second Circuit.

15 MR. CORNELL: Well --

16 THE COURT: The Sixth Circuit did quote from Wise v.
17 El Paso Natural Gas that the intent to vest must be found in
18 the plan documents and must be stated in clear and expressed
19 language. And that is a different phrase than, for example,
20 the Second Circuit in Bouboulis where the standard that we have
21 adopted is whether the plan documents contain specific written
22 language that is reasonably susceptible to interpretation as a
23 promise to vest the benefits although, I guess, the devil is in
24 the details because, frankly, when you look at Bouboulis, one
25 could argue that the language there was ambiguous but it wasn't

1 sufficiently specific so that it was reasonably susceptible to
2 interpretation as a promise.

3 But in Sprague, the Second Circuit then went on -- I
4 mean, the Sixth Circuit then went on to say we see no ambiguity
5 and, in fact, was chastised for that by the dissent or Judge
6 Martin said clearly not only was there no ambiguity but there
7 was actual clear language. So it seemed to me that as far as
8 applying different standards as a fact -- if you read the
9 opinions, they really are applying the same standard. They're
10 basically saying there was nothing ambiguous, no one was
11 misled, there's nothing ambiguous. You may agree with Judge
12 Martin, and maybe if one were writing on a clean slate, one
13 might agree with Judge Martin, but the Sixth Circuit ruled.
14 And I find it very hard for me when there's no difference in
15 the standard to say oh, the Sixth Circuit was wrong. Not that
16 they applied a different standard. I think I could do that.
17 And that's why I focused on the promissory estoppel point
18 because I think there is a slightly different approach there.
19 More than slightly. There's a different approach there than
20 the Second Circuit has taken on promissory estoppel, although
21 the Second Circuit is tough on promissory estoppel, because the
22 Sixth Circuit is less willing to look outside the plan
23 documents.

24 But I don't see them -- since their focus -- since
25 they say there's no ambiguity and since Judge Martin very

1 clearly pointed out what was wrong with their analysis
2 according to him, I don't see how I can say that they didn't
3 apply essentially the same standard and overruled them.

4 MR. CORNELL: We're --

5 THE COURT: I don't see how I can do that.

6 MR. CORNELL: We're assuming -- first off, the
7 citation at Wise is interesting. Wise was also cited in
8 Devlin --

9 THE COURT: I understand.

10 MR. CORNELL: -- and the Second Circuit said we don't
11 apply that standard.

12 THE COURT: I understand. It said there's a circuit
13 split; we don't apply it. But then, the Sixth Circuit went on
14 to say that this language was not even ambiguous.

15 MR. CORNELL: Under their definition of ambiguity --

16 THE COURT: Well, no. Everyone knows what ambiguity
17 is.

18 MR. CORNELL: -- that it's clear and convincing.

19 THE COURT: I don't view it that way. I think that
20 when you look at the dissent and you look at the opinion, the
21 Sixth Circuit concluded that the promises to the salaried
22 employees were clear in excluding the benefits. Now, Judge
23 Martin disagreed with that but they didn't disagree on the type
24 of standard to apply. They disagreed on the reading of the
25 facts, on the record, the documentary record, which they were

1 free to examine.

2 MR. CORNELL: But, of course, they're reading those
3 facts under the law that they're applying.

4 THE COURT: They're not --

5 MR. CORNELL: If we look at the --

6 THE COURT: I don't -- I guess I just don't see that.
7 I don't see them saying that it's unambiguous under the law
8 we're planning. They go far beyond that.

9 MR. CORNELL: Well, I don't think --

10 THE COURT: And one may look at this from the outside
11 and say, in reading the facts, Judge Martin was right and the
12 majority was wrong. But I'm not going to do that. I'm not
13 going to overrule the Sixth Circuit on that point when I
14 believe they're applying the same standard. And that's
15 particularly in a situation where, in Bouboulis, the Court said
16 that even if the Hall letter binds the defendants, it contains
17 no language that affirmatively operates to create a promise to
18 vest benefits notwithstanding the fact that it said that your
19 spouse will have benefits for the remainder of his or her
20 lifetime.

21 MR. CORNELL: That's right. It said that there was
22 not retiree benefits. If you look further in Bouboulis, it
23 talks about the benefits for the surviving spouse. The issue
24 is the retiree benefits. That is a separate issue from what
25 we're talking about here. If we look at the language -- and

1 it's also not an issue of a letter. These are summary plan
2 descriptions. These are the official documents that are to be
3 relied upon and were relied upon. That's the vesting standard.

4 THE COURT: No. But the Second Circuit said even if
5 the Hall letter binds the defendants. So --

6 MR. CORNELL: And the Hall letter was ambiguous at
7 best. And it certainly didn't say that the retirees got
8 benefits. It said their surviving spouses got benefits at best
9 which was the issue that was brought up in Bouboulis.

10 THE COURT: You're right. It was ambiguous at best
11 and the Sixth Circuit said "there is no ambiguity". That's a
12 quote: "There is no ambiguity here." That's on -- "we have
13 rejected this argument in the past and we reject it again now.
14 We see no ambiguity."

15 MR. CORNELL: Because to see ambiguity in that
16 standard would be clear and convincing. It's a matter of --

17 THE COURT: I don't think they were applying --

18 MR. CORNELL: -- whether we're going to apply the --

19 THE COURT: I don't think they were applying the
20 language that close. I just don't.

21 MR. CORNELL: I don't think they probably were either
22 because they weren't looking at it from the issues that we're
23 looking at it. They were applying the law of their circuit.
24 The question is whether this Court is going to apply the law of
25 the Second Circuit.

1 THE COURT: Okay. You're not going to convince me of
2 that. You didn't convince me last week. You're not going to -
3 - or last hearing. You're not going to convince me of that
4 now. I considered that point and I just don't see it. There
5 is a difference, I believe, between the Sprague case standard,
6 the standard they actually applied, and the Second Circuit
7 standard on promissory estoppel. But I haven't seen in this
8 new batch of evidence enough to satisfy the Second Circuit's
9 promissory estoppel standard.

10 MR. CORNELL: And that's partially a timing issue
11 because there's --

12 THE COURT: No. I understand.

13 MR. CORNELL: -- documents continue to come in, of
14 course.

15 THE COURT: Right.

16 MR. CORNELL: And I appreciate the Court understands
17 that.

18 THE COURT: Okay.

19 MR. CORNELL: But there's another issue, too, then.
20 There's the Frigidaire summary plan description --

21 THE COURT: Right.

22 MR. CORNELL: -- that the best that I can tell wasn't
23 even considered in Sprague. So we've got another subset of
24 retirees who are Delphi retirees now.

25 THE COURT: Right. And the debtors' response to that

1 is that the debtor didn't pick up the Frigidaire retirees.

2 MR. CORNELL: And --

3 THE COURT: Have you had a chance to -- I mean, I'm
4 going to ask Mr. Butler to take me through the assumption
5 agreements on that point. But do you have a response to that?

6 MR. CORNELL: Not at this point. I got the documents
7 from one of the Delphi retirees who had been at Frigidaire.

8 THE COURT: Right.

9 MR. CORNELL: So that's how it came into our
10 possession. So I guess the assumption would be, and this is
11 what the retiree has vetted out, that retired -- excuse me, was
12 at Frigidaire, then went back to GM, then became a Delphi
13 retiree. Now, I don't know how many people fall into that
14 category. But this is a separate issue than the overall
15 documentation that we have addressed.

16 THE COURT: Right. I understand that.

17 MR. CORNELL: The other issue is there is another
18 division, American Axle, and we don't yet really understand
19 what happened there except that we were getting contacted by
20 retirees who said I never worked a day in my life at Delphi.
21 Why is Delphi terminating my benefits? And in response, they
22 said -- the debtors gave them the master separation agreement.
23 It doesn't say anything about American Axle. I can see yet --

24 THE COURT: I need to have Mr. Butler walk me through
25 that, too, because I looked at -- I don't see any mention of

1 that company either.

2 MR. CORNELL: Okay.

3 THE COURT: But I guess the issue I have there and it
4 sounds to me that it's your issue, too, is it doesn't seem to
5 me that if GM is still on the hook for those benefits or
6 American Axle is, it wouldn't seem to me that Delphi's
7 modifying those benefits would affect third parties' liability
8 for them.

9 MR. CORNELL: I guess it depends if those -- if the
10 GM obligations were transferred to Delphi. And that's
11 certainly the understanding that we have.

12 THE COURT: Right.

13 MR. CORNELL: And if that's the case -- but again, I
14 can't really speculate on it because we haven't seen all the
15 documents yet.

16 THE COURT: Okay.

17 MR. CORNELL: But I would go back to the threshold
18 issue which is there is undisputably an eleven-year period that
19 these people were told that they had lifetime benefits at GM's
20 cost.

21 THE COURT: But isn't that exactly what Judge Martin
22 said in his dissent?

23 MR. CORNELL: It's one of the things that Judge
24 Martin said in his dissent, absolutely.

25 THE COURT: And he --

1 MR. CORNELL: The question is whether the majority
2 opinion was taken into account, that standard against the
3 standard that they had in the Sixth Circuit and whether that
4 would be different in the Second Circuit. In the cases that I
5 see certainly indicate, every one of the cases, including
6 Bouboulis and more, that that type of language with that type
7 of a vesting requirement without utilizing without unilateral
8 termination reservation would absolutely vest benefits. And,
9 in fact, if these people did work during that ten-year period,
10 they became vested. It can't be taken away.

11 THE COURT: Okay.

12 MR. CORNELL: And I look --

13 THE COURT: I guess where I disagree with you on that
14 is that it seems to me, first, that as actually applied in the
15 Sprague case and in the Bouboulis case, in Devlin, in
16 Wingspread and other cases, the standards are not that
17 different as Sprague applied them. I think that under the
18 Second Circuit standard, you need something more than
19 ambiguity. You need specific written language. I'm not quite
20 sure what that means except they require it to be specific that
21 is reasonably susceptible to interpretation as a promise.

22 MR. CORNELL: In the language that the Devlin court -
23 - one of the courts looked at --

24 THE COURT: Well, I'm looking at the standard as
25 articulated by the Second Circuit in Devlin and requoted from

1 Devlin in Bouboulis. And then even in Wellspring -- I'm sorry,
2 Wingspread -- but which first talks about a circuit split. And
3 I think the underlying issue on the split is one that the
4 Seventh Circuit identified, and, actually, the First Circuit
5 has since identified as dealing one with presumptions and how
6 to deal with ambiguity and where does the burden fall,
7 etcetera. And I don't see any discussion ultimately in Sprague
8 on burdens or presumption or the like on this. The majority en
9 banc says this is not ambiguous. There wasn't such a promise
10 here. And they quote the language. And Judge Martin quotes
11 the language. But they still say it. And you may think that
12 they were wrong and agree with Judge Martin on how they
13 analyzed that language but I don't think they're applying a
14 different standard. They basically just say that wasn't the
15 case here.

16 MR. CORNELL: But I guess the question then sitting
17 in the Second Circuit when we look at the language that's
18 cited, does that meet the standard under Devlin, Pfeiffer,
19 Bouboulis --

20 THE COURT: But --

21 MR. CORNELL: -- any of the cases?

22 THE COURT: But if they apply the same analysis
23 ultimately and we're just talking about whether that
24 application was, as a factual matter in terms of reading the
25 documents, incorrect, who am I to reverse the Sixth Circuit?

1 Their find is the same type of analysis.

2 MR. CORNELL: You're not reversing the Sixth Circuit.
3 You're addressing the issues that are before the Court today --

4 THE COURT: Well --

5 MR. CORNELL: -- for these people and the language
6 that's presented and the question of vesting. It's not an
7 issue of overruling or going back to the Sixth Circuit. It's
8 whether that case applies and binds this Court. And I don't
9 believe it does because this Court would have to take an
10 independent analysis of what's before it now. The language
11 that we put before you, respectfully --

12 THE COURT: So I should just ignore what the Sixth
13 Circuit held a year or so before Delphi assumed the legal
14 responsibility of GM to these employees?

15 MR. CORNELL: I think what you should do is look at
16 the language that's before the Court and apply the Second
17 Circuit standard to see whether or not it's vested.

18 THE COURT: All right.

19 MR. CORNELL: I look at it this way, Your Honor. If
20 I, on my flight back to Chicago today, pull up my laptop --
21 active on the management committee of my law firm. If I add
22 the exact type of language here, I promise benefits. If for
23 every year for the next eleven years we reiterate that promise,
24 we benefit in our recruiting and our retention. Can we do
25 that? I don't see any of the Second Circuit cases that would

1 allow us to do that. Yet, that's exactly what GM did and
2 that's what Delphi is benefiting from today.

3 THE COURT: And it's exactly what Sprague said GM
4 could do notwithstanding a very clear dissent and on an
5 analysis of the documents and not relying on presumptions or a
6 doctrine that said I will ignore ambiguities or read out
7 ambiguities. So I don't know what more we can say on this one.
8 We're just going to disagree about this.

9 MR. CORNELL: Your Honor, the other issue is we were
10 to report on the health care coverage tax credit --

11 THE COURT: Right.

12 MR. CORNELL: -- and advise the Court that we
13 continue to negotiate with the debtors on those issues.

14 THE COURT: Okay. And I -- to me, reading the two
15 pleadings, that seems to be a fair summary of it. I would take
16 the debtors at their word that they want to try to preserve
17 these benefits if they can. And I guess the one issue I have
18 there is one I'll ask Mr. Butler but you can be thinking about
19 it, which is when you say you're working to try to preserve
20 these things, is there a commitment to do that beyond April
21 1st?

22 MR. CORNELL: On behalf of the debtors?

23 THE COURT: Yeah. On behalf of the debtors.

24 MR. CORNELL: I believe so.

25 THE COURT: Okay.

1 MR. CORNELL: Mr. Butler can clarify but that's
2 certainly been my interpretation of it.

3 THE COURT: Okay. I wasn't exactly sure of that but
4 I'll ask the debtors to confirm that.

5 MR. CORNELL: Okay. Thank you, Your Honor.

6 THE COURT: Okay.

7 (Pause)

8 MR. BUTLER: Excuse me one moment, Your Honor.

9 (Pause)

10 MR. BUTLER: Your Honor, let me address, if I can,
11 the evidentiary matters and then I'll walk through the proposed
12 order and the health care tax credit issues separately.

13 THE COURT: Okay.

14 MR. BUTLER: But let me deal with the evidence first.
15 It's the debtors' view, Your Honor, and position, that the
16 retirees' committee did not submit any evidence today that
17 would suggest that or lead to the conclusion based on the
18 standard that Your Honor included in the prior order that would
19 establish that salaried OPEB benefits had vested with respect
20 to any eligible salaried retiree or group thereof. What's
21 clear from the record here is that there is no additional
22 evidence with respect to Delphi documents. There are
23 additional documents that have been submitted from the 1974 to
24 1985 period that Your Honor has dealt with previously in oral
25 argument and at the prior hearing. And even as the Sprague

1 case had indicated in its factual findings, there were those
2 documents, those plans had the waivers in and out of them from
3 the early '70s through the late '80s and then they consistently
4 stayed in after the '80s. So that is what it is. We've argued
5 that and Your Honor has indicated the Court's view on that
6 subject.

7 There's nothing with respect to Delphi. There's
8 also, I think important to say, no evidence submitted by the
9 retirees committee that would support the suggestion made in
10 the prior record that somehow people who were disabled were
11 treated differently or specially or there were promises made or
12 any other allegations made on the record about a disabled
13 class. That was one of the classes that was -- or groups that
14 was identified at the prior hearing. And the reason nothing
15 was submitted by the retirees' committee is because, as Delphi
16 indicated at the prior hearing, there is no different plan for
17 disabled parties. They participate in the plans that have the
18 same reservations that everybody else does.

19 In addition, Your Honor, I think that Delphi has done
20 everything that it could do to assist in adducing additional
21 information with respect to this subject that was the subject
22 of the hearing today. And Supplemental Exhibit 5 shows that on
23 February 26th, we sent out a letter to all of our retirees. It
24 was a letter Delphi drafted and the content of that letter
25 except for the last sentence of it was Delphi's drafting and

1 thought process in which we wanted to make clear to the
2 retirees, among other things, that they should submit the
3 information back in the information package and it would not,
4 for example, to the extent they had objected, affect their
5 appellate rights with respect to the matter. We put that
6 savings language in to try to encourage people to make sure
7 that they filled out the information and returned it. And we
8 also pointed out that a retirees' committee had been appointed
9 and that we would post the names on delphidocket.com and that
10 to the extent they believed anyone receiving the letter -- and
11 we sent it to every retiree -- believed they had any evidence
12 that the OPED benefits that they were receiving were vested or
13 contractual benefits, they should contact the retirees'
14 committee. We sent that notice to everybody; it's set forth in
15 Supplemental Exhibit 5. And then we posted a lengthy notice,
16 which is reproduced in Supplemental Exhibit 6, that includes
17 the names of the -- the appointment of the retirees' committee
18 with links to the names of the people on the committee, with
19 links to the February 26th letter, Supplemental Exhibit 5, and
20 then contains, as set forth in Supplemental Exhibit 6, again, a
21 request for any retiree, including any employee receiving
22 disability benefits, that have documents in their possession
23 from Delphi or General Motors that include language stating or
24 implying that health insurance or life insurance were vested or
25 lifetime, immediately forward them.

1 And so, we made, in addition to the motion that was
2 filed earlier that was served on every single retiree, there
3 were the subsequent communications by the company drafted at
4 the company's own behest not at anyone's own direction or at
5 the -- or as part of negotiation as the company, as we
6 indicated, Your Honor, at the prior hearing, the company is as
7 interested in anybody else in having the truth of this issue
8 determined by this Court. If, in fact, there are vested
9 benefits, we should all recognize that. I think Your Honor
10 pointed out to me, I acknowledged the point at the last
11 hearing, that you wanted to have a supplemental hearing and
12 take some additional time because if there was an obvious
13 mistake here, you didn't want the Court or the debtors to make
14 it. And we had that point and we agree with it and we've
15 solicited. The fact is that Delphi documents are, as the Court
16 has pointed -- the Delphi documents are entirely unambiguous.
17 Sprague says the GM documents are ambiguous. But clearly, the
18 Delphi documents are completely unambiguous. And there's no
19 sustainable allegation that any Delphi document created a
20 promise of any kind under Second Circuit law.

21 So, we've gone forward and we've done that. And the
22 only -- that leaves only two subgroups that have been
23 potentially raised by the retiree committee. First, Your
24 Honor, they have suggested that responsibility for certain
25 retirees of GM's former Frigidaire division which was divested

1 by General Motors thirty years ago in 1979 was transferred to
2 Delphi through a "mechanism". That "is not yet apparent" at
3 page 28 of the report. Just to say it, Your Honor, and I have
4 company representatives here who will affirm it, Delphi never
5 assumed responsibility from GM's former Frigidaire division and
6 the committee offers no evidence regarding that assertion. And
7 the company will confirm, Your Honor, for you on the record --
8 Mr. Smith is here, Mr. Gebbia is back -- that there is no
9 Frigidaire retiree that's currently in our plans. They were
10 just never -- they never came over to the company. Frigidaire
11 employees -- people that retired from Frigidaire are someplace
12 else, whether they're at GM or where they are, I don't know,
13 but they are not at Delphi.

14 THE COURT: And in the master separation agreement
15 and the U.S. Employee Matters Agreement, how does one see that
16 they're not included? Or are you relying on other evidence --

17 MR. BUTLER: Well --

18 THE COURT: -- on this?

19 MR. BUTLER: -- Your Honor, first, there's an
20 assertion from some of them that they are included. I mean,
21 you need to have somebody show up and say I'm included. I can
22 tell you, and you can ask Mr. Gebbia, there is -- we know in
23 terms of divested units, the company has a headcount of
24 approximately 565 people of the 6000 plus retirees. You know,
25 we have a headcount of how many retirees in the plan are from

1 those divested units. So, for example, we know there's
2 approximately 184 from the American Axle, and I'll deal with
3 American Axle in a few minutes. And there are some from the
4 Delco Remedy divestiture and from the EDS divestiture and from
5 The Guide divestiture and from the Hughes Electronics
6 divestiture. And there are some from the Inteva divestiture
7 Your Honor approved recently. There are -- which is implicated
8 here. We have headcounts, we track them, we know who's in
9 them. There aren't any Frigidaire employees. Now, the way,
10 you would, I think, track -- deal with it legally is that
11 Frigidaire was spun off, as I said, thirty years ago. The
12 automotive component group, which was at General Motors, the
13 predecessor to Delphi Automotive Systems, wasn't even in
14 existence at the time that Frigidaire was spun off thirty years
15 ago. The employee matters agreement gives Delphi obligations
16 for employees whose last employment in GM was in a group of
17 companies that was with Delphi or a Delphi business unit. If
18 you look at Supplemental Exhibit -- I believe it's number 4,
19 and at the definition, paragraph 1(c) of that document, you'll
20 see the definition.

21 Frigidaire was never a Delphi business unit. And the
22 retirees' committee can't contradict that. I mean, that's just
23 a fact. And its divestiture predated all of this.

24 THE COURT: Okay.

25 MR. BUTLER: And, you know, I presume that the

1 Frigidaire employees are wherever they are. They're just not
2 with us. And we know that under this agreement and we know
3 that as a matter of fact. And Mr. Gebbia can confirm that on
4 the record, Your Honor, if you want to ask him.

5 THE COURT: Okay. Is he potentially a witness on the
6 second point, too?

7 MR. BUTLER: I can go through the second point. I
8 don't know how much evidence is needed.

9 THE COURT: Well, I just want to know. Counsel for
10 the committee may want to cross-examine him and I don't want
11 to --

12 MR. BUTLER: Okay.

13 THE COURT: -- put him on twice --

14 MR. BUTLER: Okay.

15 THE COURT: -- if he's a witness on both points.

16 MR. BUTLER: Well, let me go through -- I mean, all
17 I'm just saying is I don't that we're required to put evidence
18 on, Your Honor.

19 THE COURT: Well, contrary to the assertion in the
20 report, I did not in my ruling and I hope I perhaps made this a
21 little clearer in my modified bench ruling that I had filed
22 yesterday -- did not put a kind of summary judgment burden on
23 the claimants. I actually put a heavy burden on the debtor
24 akin to a summary judgment type of burden to show that there
25 weren't any vested rights. So I think that while I recognize

1 that the report doesn't give a source for any legal liability
2 of Delphi to retirees of Frigidaire, I think the debtors need
3 to -- given the fact that it's been raised as a possibility,
4 need to show me as you've been doing for the last ten minutes
5 that, in fact, Frigidaire wasn't picked up.

6 MR. BUTLER: I would --

7 THE COURT: Frigidaire retirees weren't picked up
8 because it was divested in '79 or wasn't separately addressed
9 in these documents.

10 MR. BUTLER: Okay. And I'm happy to do whatever the
11 Court wants and meet whatever burden the Court wants. It's
12 hard to prove a negative. It's a completely unsubstantiated
13 allegation.

14 THE COURT: Well, I mean, someone can say that
15 they're not in our plan and they left in '79 and it's not
16 covered by the documents then, you know --

17 MR. BUTLER: Right.

18 THE COURT: But that is a proffer of testimony and at
19 least it's the first point. And I do think that the committee
20 should have the right to cross-examine him on that.

21 MR. BUTLER: Okay. Your Honor, let me now then go to
22 American Axle. The allegation is that when American Axle was
23 divested -- and again, let me just get to the right place.
24 This deals with -- American Axle was dealt with beginning, I
25 think, on page 28 of the report. And this was a divestiture by

1 GM prior to the Delphi spin. It was a divestiture in 1994.
2 And there is here, unlike with Frigidaire -- there are 184
3 American Axle retirees that are covered by the terms of the
4 Delphi plans. And again, one can look at the master separation
5 agreement for guidance on this. And I will -- let me just get
6 my --

7 If you look at -- I think it's, Your Honor, paragraph
8 6 on page 9 of the employee matters --

9 THE COURT: The employee matters or master --

10 MR. BUTLER: This is Supplemental Exhibit 4 --

11 THE COURT: Okay.

12 MR. BUTLER: -- employees matter agreement. And this
13 is Supplemental Exhibit number 4.

14 THE COURT: Paragraph 6 in the employee matters?

15 MR. BUTLER: Correct.

16 THE COURT: Okay.

17 MR. BUTLER: And you can see here that what this says
18 is -- and I'll just -- I'm not going to read the entire
19 paragraph, Your Honor. It's in the record. But this talks
20 about the employee -- we'll establish certain employee benefit
21 plans. Those plans will have terms substantially identical to
22 the GM plans. And we'll provide service for prior GM service
23 except as otherwise provided. And that we will assume the
24 liabilities with respect to the Delphi employees under such
25 plans except as provided in Section 3(a) hereof which incurred

1 prior to or after the date.

2 Now, paragraph 3(a) on page 2 says that for employees
3 who are or become Delphi employees or Delphi terminated
4 employees as of the effective time, Delphi and/or Delphi
5 benefit plan shall assume those employee-related obligations or
6 liabilities of GM regardless of when incurred except as
7 expressly stated. And then there's our certain limited
8 exceptions. And we wouldn't argue those limited exceptions
9 apply to American Axle for purposes of the assumption.

10 THE COURT: But how would they be Delphi employees or
11 Delphi terminated employees since they wouldn't be active in -
12 they certainly weren't active employees.

13 MR. BUTLER: Because if you look at what a Delphi
14 terminated employee is --

15 THE COURT: Right.

16 MR. BUTLER: -- it is -- this is 1(c) again.

17 THE COURT: Right.

18 MR. BUTLER: "Delphi's terminated employee is an
19 individual who is not currently a Delphi employee but whose
20 last employment in the GM control group of corporations --

21 THE COURT: Oh, okay.

22 MR. BUTLER: -- was with Delphi, Delphi business
23 unit -- or Delphi business unit. So you have this legal
24 fiction -- I mean --

25 THE COURT: And the Delphi business unit was where

1 they were last employed?

2 MR. BUTLER: Correct. And that was the one that was
3 spun off in 1994. So the American Axle employee was never a
4 Delphi employee in the sense they never had a badge that said
5 I'm Delphi.

6 THE COURT: Right. But they were working in that
7 business unit.

8 MR. BUTLER: They were working in 1994 in something
9 that was within the control group and that was subsumed within
10 this employee matters agreement --

11 THE COURT: Okay.

12 MR. BUTLER: -- subject to the expressed provisions
13 of the agreement --

14 THE COURT: Contrary to the proffer of Mr. Gebbia's
15 testimony with regard to Frigidaire, those people weren't part
16 of the business unit.

17 MR. BUTLER: Right because they were thirty years
18 earlier. There was no business control -- Delphi business
19 group control group back then.

20 THE COURT: Okay.

21 MR. BUTLER: But it was subject to the employee
22 matters agreement. And if you look at the employee matters
23 agreement in paragraph 6, the last -- or Section 6 on page 9,
24 the last sentence, "Except as provided and set forth in Section
25 12(c), nothing in this agreement shall prohibit Delphi from

1 amending, modifying or terminating Delphi employee benefit
2 plans and employee arrangements." And so, the plans that were
3 established here are established subject to the key reservation
4 that's been at the heart of this agreement. And the only
5 exception under 12(c) was a severance arrangement that was
6 through December 31, 1999. It's not the material -- it's not
7 relevant to this discussion.

8 I have no idea -- well, that's not accurate. It's
9 not for me to say what General Motors promised to American Axle
10 employees in 1994 in connection with their purchase agreement.
11 I've looked at it. I mean, it seems to suggest that General
12 Motors, for itself, made certain commitments to those
13 employees. But those commitments were never assumed by Delphi.
14 And as Your Honor pointed out earlier in argument, whatever
15 claims those 184 employees might have as it relates to General
16 Motors is between them and General Motors. Delphi agreed --
17 and just to say it, from 1999, there were no -- in 1999 at the
18 time of the spin, there were no American Axle retirees
19 transferred to Delphi. The ones that were transferred are the
20 ones who -- the people who transferred -- or the people who are
21 in our retiree plan now, the 184 people, are people who were
22 pre-1994 American Axle folks who retired from American Axle on
23 and after the effective date of the spin in 1999. Those 184
24 people are in our plans. They're in our plans subject to the
25 terms of our plans which include the right to terminate. And

1 modify and just to make the point again, in 2005, Delphi
2 materially modified the terms of the plan as it related to all
3 of its participants including the 184 American Axle
4 participants where we eliminated medical and prescription drug
5 coverage from lifetime to instead expire at the time of
6 Medicare eligibility in the normal course. And that was a 2005
7 modification that was a central part of our original hearing
8 which became effective in 2007. It applied to everybody
9 including all the American Axle employees. None of them took
10 issue, sued the company, took any action with respect to that
11 modification because American Axle employees understand that
12 from Delphi what they obtained are benefits that are subject to
13 modification or termination at the discretion of the company.
14 Just as the company made a modification in 2005, the company
15 now seeks authority to make the modification here in 2009, a
16 further modification.

17 And so, I can't comment on and it's not, frankly, my
18 business to comment on whether these 184 employees do or do not
19 have any additional rights vis-a-vis General Motors based on
20 the purchase and sale agreement in 1994. What is absolutely
21 clear from the record is that Delphi has no obligation to them
22 beyond what was assumed in the employee matters agreement. And
23 we had administered that obligation appropriately over the last
24 ten years. And the course of conduct here between the American
25 Axle employees and the company is, I think, preclusive and

1 demonstrates that the company has previously maturely modified
2 these benefits and the coverages.

3 And there is, I think -- let me just look at one
4 other -- I would just point out, Your Honor, with this
5 Supplemental -- this is Supplemental Exhibit 11. This is a
6 portion of the salaried health care program plan. This was
7 originally attached as Exhibit 3 to the Gebbia declaration
8 which has already come into evidence, which was Exhibit 2 in
9 the original trial record. We've excerpted the page from that
10 which is now Supplemental Exhibit, as I said, 11. And if Your
11 Honor looks on page 43 and looks at Article 3, Section 5 and
12 looks at (b)(1), you'll see this is the divestiture paragraph
13 that deals with divested employees and the coverage in the plan
14 and makes it clear that employees are eligible to retire -- are
15 eligible to enroll for health care coverages subject to all
16 terms of the condition of the program, meaning Delphi's
17 program, then, in effect, when their employment at the
18 successor company ceases, this is essentially the door that
19 lets someone who was never a Delphi employee per se actually
20 come in to the Delphi plan. It comes in through this
21 provision, this portal, if you will. So, Your Honor, that's
22 the explanation with respect to the American Axle employees.

23 THE COURT: Okay. Why don't I let you finish up and
24 then give counsel for the committee an opportunity to cross, if
25 he wants to?

1 MR. BUTLER: All right. Your Honor, in terms of the
2 evidentiary record -- I'm going to talk about the form of the
3 order and the health care and other things -- that's, I think,
4 the only response we have.

5 THE COURT: Oh, all right.

6 MR. BUTLER: There was very -- I mean, there was
7 nothing else --

8 THE COURT: So do you want to cross-examine Mr.
9 Gebbia on those proffers of his testimony about Frigidaire and
10 American Axle?

11 MR. CORNELL: I would, Your Honor. I'm not really
12 sure yet what we're seeing or hearing. There wasn't a
13 declaration of his proffer from Mr. Gebbia with respect to this
14 issue. So it's --

15 THE COURT: No. It's just --

16 MR. BUTLER: This is rebuttal testimony.

17 THE COURT: It was just a proffer with regard to
18 Frigidaire that it wouldn't fit within the definition in 3(a).

19 MR. CORNELL: And at this point, I'm not sure what
20 would be beneficial in doing it but I could ask him a couple
21 questions, I suppose.

22 THE COURT: Okay.

23 MR. BUTLER: It actually, I think, would be Mr. Tom
24 Smith from our employee benefits who is also here as -- it's
25 what we want to present.

1 THE COURT: Okay. So could you come up, Mr. Smith?
2 Yeah. Take a seat in that chair.

3 (Witness duly sworn)

4 THE COURT: And it's Tom Smith?

5 THE WITNESS: Thomas Smith.

6 THE COURT: Okay. Let me just ask. You heard the
7 proffer of your testimony over the last ten minutes or so by
8 Mr. Butler. If actually asked to testify under oath, would you
9 testify to those statements?

10 THE WITNESS: Yes, Your Honor, I would.

11 THE COURT: Okay.

12 CROSS-EXAMINATION

13 BY MR. CORNELL:

14 Q. Mr. Smith, is it your testimony then that there are no
15 Frigidaire retirees within the Delphi retiree group?

16 A. Yes.

17 Q. And how do you know that -- what gives you that knowledge,
18 I guess?

19 A. I've asked our administrator who keeps track of
20 retirements and where those retirements came from.

21 Q. So what if it was someone who had, at the time of the
22 divestiture, left Frigidaire obviously, 'cause it was sold to
23 White, and then began work in another unit of GM? How would
24 you know that person was a former Frigidaire retiree as opposed
25 the unwashed masses of GM employees that were taken on by

1 Delphi?

2 A. We would not know if an individual worked for Frigidaire
3 at one point, came back to General Motors at another point and
4 then became an active employee of Delphi at the spin. We would
5 not consider them a Frigidaire employee because they had worked
6 for Delphi.

7 Q. So you don't know if there are people in the Delphi
8 retiree group that we're representing who actually have those
9 benefits or the promises made in the summary plan description
10 that we attached to the filing we made on March 6th of 2009, is
11 that correct?

12 A. We do not know if there were specific people who worked
13 for Frigidaire back prior to 1979 that transferred over. We do
14 not keep them separately. So we don't know those people. Just
15 like we wouldn't -- if a person worked for Ford prior to coming
16 to GM or to Delphi and then retired. So it's the same -- same
17 principle here. They were Delphi employees at the time that
18 they retired. Consequently, we don't differentiate unlike
19 those people, as mentioned, who never worked for Delphi but
20 came in through the door of the employee matters agreement.
21 Those ones we track.

22 Q. Okay. So you don't know whether there are retirees in
23 this group that were given the summary plan description from
24 Frigidaire and then later became GM employees and Delphi
25 employees?

1 A. I do not know whether or not there are people who used to
2 work for Frigidaire --

3 Q. Okay.

4 A. -- in our population.

5 MR. CORNELL: Thank you.

6 REDIRECT EXAMINATION

7 BY MR. BUTLER:

8 Q. Mr. Smith, do you know -- would you know if someone had
9 retired from Frigidaire whether they were in your population or
10 not?

11 A. If they were terminated employees in that respect -- in
12 other words, if they never worked for Delphi and were
13 Frigidaire retirees, we would know that, yes.

14 Q. All right. So, like the American Axle employees, if they
15 retired from American Axle, retired from Frigidaire, you would
16 keep track of them?

17 A. Yes, sir.

18 Q. If they continued to work for General Motors not in the
19 Frigidaire unit and were in the GM programs and then came over
20 to Delphi, you would consider them, as you testified earlier,
21 GM or Delphi employees may be treated in the other ordinary
22 course?

23 A. Yeah. We would consider them Delphi retirees because they
24 worked for Delphi at the point in time that they retired, yes,
25 sir.

1 Q. Thank you.

2 MR. BUTLER: No further questions, Your Honor.

3 THE COURT: Do you know whether Frigidaire was a
4 business or any part of it that was conducted as part of the
5 so-called Delphi Automotive Systems business or the Delphi
6 Automotive Systems sector of GM before the separation?

7 THE WITNESS: I do not know the hierarchy or the
8 structure how that business got transferred or where. No, I do
9 not.

10 THE COURT: Okay. All right. Any more questions?

11 MR. CORNELL: Nothing further, Your Honor.

12 THE COURT: Okay. You can sit down, sir.

13 MR. BUTLER: Your Honor, Mr. Stipp, who's testified
14 for the company before knows the answer to the question Your
15 Honor just asked if you --

16 THE COURT: All right.

17 MR. BUTLER: And we're happy to provide him to the
18 Court so there's a complete record here.

19 THE COURT: Okay. Why don't you take a seat up here,
20 sir?

21 (Witness duly sworn)

22 THE COURT: And could you spell your name for the
23 record?

24 THE WITNESS: Keith, K-E-I-T-H, Stipp, S-T-I-P-P.

25 THE COURT: And what is your title?

1 THE WITNESS: I'm the executive director of
2 restructuring for Delphi.

3 THE COURT: Okay. And how long have you been an
4 employee of Delphi?

5 THE WITNESS: Twenty-four years.

6 THE COURT: So when I say Delphi, since Delphi was
7 actually spun off in 1999 --

8 THE WITNESS: I worked for General Motors prior to --
9 for the twenty-four years, I worked for GM and Delphi.

10 THE COURT: Okay. All right. In evidence in this
11 proceeding is a document called the employee -- U.S. Employee
12 Matters Agreement. Are you familiar with that agreement
13 generally?

14 THE WITNESS: In general.

15 THE COURT: Okay. There's a definition in the
16 agreement that says "Delphi business unit". And it says
17 "Delphi business unit shall have the same meaning as Delphi
18 Automotive Systems business as defined in the master separation
19 agreement." And "Delphi Automotives Systems business" as
20 defined in the separation agreement means the business
21 conducted by the Delphi Automotives System sector of GM at any
22 time on or before the contribution date. Do you know whether
23 Frigidaire or any part of it was part of the Delphi Automotives
24 System sector of GM or the Delphi Automotives Systems business
25 before the separation?

1 THE WITNESS: It was not.

2 THE COURT: And what's the basis of your statement?

3 THE WITNESS: The predecessor of Delphi within
4 General Motors was a unit called the Automotive Components
5 Group where units were brought together. That was something
6 that occurred after I began with General Motors in 1984.
7 Frigidaire was gone in 1979. So it was not part of that unit.
8 Did not exist at the time that was brought together --

9 THE COURT: Okay.

10 THE WITNESS: -- within GM.

11 THE COURT: Do you want to question Mr. Stipp?

12 MR. CORNELL: No, Your Honor.

13 THE COURT: Okay. Do you want to, Mr. Butler? Okay.
14 You can step down, sir. So then, I think you were going to
15 talk about the potential credit and --

16 MR. BUTLER: Your Honor, and I think I can do that as
17 best as I can by walking through the proposed order that we're
18 asking the Court to consider.

19 THE COURT: Okay.

20 MR. BUTLER: And we have actually a supplement to
21 that order that I wanted to address.

22 THE COURT: Okay.

23 MR. BUTLER: And again, I would say, this order is
24 not a negotiated order or a consent order. It's the debtors'
25 proposal as the order that should settle this final hearing.

1 And I'll just deal with the numbered paragraphs.

2 We believe, Your Honor, that based on the standard
3 Your Honor set that the evidence needed to be consistent with
4 the Court's prior bench ruling and applicable law. We believe
5 the retirees' committee has not presented any competent
6 evidence to establish that salaried OPEB benefits have vested
7 with respect to any eligible salaried retiree or group thereof.
8 Accordingly, we'd ask Your Honor to rule as to paragraph number
9 1.

10 Paragraph number 2 would then be the finding that
11 OPEB benefits have not vested and the debtors have reserved the
12 right to modify or terminate them.

13 Paragraph 3 would authorize but not direct the
14 debtors to terminate the OPEB benefits as provided in this
15 motion. And while it uses the word "terminate", the reason it
16 says is provided in the motion. It's really taking the actions
17 that are set forth earlier in the order in subparagraphs A
18 through F which are spelled out as to what those actions are
19 and also in the motion.

20 The paragraph 4 asks the Court to reach the legal
21 conclusion that is supported by Supplemental Exhibit number 12
22 that the debtors' termination of their contribution does not
23 constitute a qualifying event under 29 U.S.C. 1163. That is
24 that there is no lifetime COBRA coverage here. That is an
25 issue that was raised by the retirees' committee in their

1 report and rebutted by the debtors in our response. And --

2 THE COURT: Why do we need that? This wasn't
3 something that was sought as part of the original motion. I
4 mean, is this really --

5 MR. BUTLER: Well, Your Honor, the question -- this
6 is all dealing with -- the whole issue of the health care --
7 there's a number of things that I'm about to describe here that
8 are -- to implement -- these are implementation matters
9 associated with the --

10 THE COURT: Okay.

11 MR. BUTLER: -- order. And the reason that we're
12 asking for that finding is, number one, the retirees' committee
13 has clouded the record through that assertion. They have
14 basically said in their report don't grant the motion because
15 there is lifetime COBRA here. Their assertion is that we can't
16 do what we want to do in the motion because of lifetime COBRA.
17 And their assertion is that this act of ours is authorized by
18 the Court would not, in fact, relieve the debtors of liability
19 or responsibility which we argue has been an -- liability all
20 along but instead would impose additional economic burdens on
21 the estate. And our view of that as raised by the retirees'
22 committee which we think we have conclusively rebutted is set
23 forth in the statute. And if --

24 THE COURT: And you're relying on the one-year --

25 MR. BUTLER: I'm relying on the twenty-four month

1 window. I mean, if you look at the reg -- we've provided both
2 the statute and the regs, and they're clear on that point,
3 there's a twenty-four month window, and the retirees' committee
4 hasn't asserted any precedent to the contrary. But that
5 doesn't end the health care tax credit analysis by the company,
6 because, in fact, what we have done is spent a significant
7 amount of time, as I promised the Court we would do, evaluating
8 what options might be to preserve this health care tax credit
9 to the extent it might otherwise be deemed to be applicable.

10 And the fact is that while the avenue of a lifetime
11 COBRA event is not available to the retirees here, because this
12 was not terminated within the statutory window, there are two
13 other avenues, one that would provide coverage only for a small
14 subset of parties, that would be retirees who've retired within
15 the last eighteen months who received COBRA notices in
16 connection with their retirement, and it would provide some
17 limited protection to them in the event there was a triggering
18 event under the statute. But that provides relatively limited
19 coverage to a subset, and it also has a fairly limited window,
20 because it's only for the window of their COBRA period, which
21 is generally eighteen months from the time of the separation.
22 And so that window started running for many of them months ago
23 and would provide very little additional coverage.

24 What we have discovered in these discussions and
25 which obviously wasn't apparent at the time we filed our motion

1 because Congress hadn't passed it yet, is the fact -- and we
2 have included this in the record as Supplemental Exhibit number
3 13. It turns out that Congress, when they passed the stimulus
4 bill last month, actually amended this provision of the
5 Bankruptcy Code and provided that debtors in a Chapter 11
6 case -- if the debtors implemented a voluntary employee
7 beneficiaries association under 26 U.S.C. Section 501(c)(9)
8 that as long as the debtors did that in connection with an
9 order of the bankruptcy court in their Chapter 11 case, that
10 provided a separate avenue for the health care tax credit which
11 would provide not a sixty-five percent coverage but an eighty
12 percent tax credit. And that would run through December 31,
13 2010.

14 That expires currently under the legislation, as it
15 was adopted and enacted by the federal government through
16 December 31, 2010, unless it's subsequently extended by
17 Congress. For that reason, even though there is no triggering
18 event now, and there may never be a triggering event, so this
19 may be entirely a pedestrian activity here, we believed that it
20 was prudent, and in fact important, that the Court authorize
21 and direct the debtors to make provisions for, as paragraph 5
22 of the proposed order says, and contingent upon the occurrence
23 of a triggering event, that had --

24 THE COURT: The pension termination.

25 MR. BUTLER: Which would be, if that occurs, that we

1 implement a VEBA which we asked Your Honor to find -- statutes
2 in front of Your Honor, I believe Your Honor can find,
3 qualifies covered employees who have retired or will retire for
4 the tax credit that's available through the American Recovery
5 and Reinvestment Act of 2009, subject to the windows that are
6 contained in there, obviously. As Congress established them
7 with two key provisions, one, that debtors have no obligations
8 to fund or contribute to any such VEBA. These contributions
9 would come solely from participants in the VEBA. Said another
10 way, the debtors aren't prepared to incur financial
11 responsibility they do not have, but they are prepared to take
12 actions which we think we found a conduit here to do to
13 preserve this tax credit. And also providing that we'd only be
14 required to maintain that VEBA through the later of the month
15 ending January 1, 2011 or such later date as may be provided by
16 any changes to 26 U.S.C. 35 and the subsection thereof, or any
17 substantially similar provision in the Internal Revenue Code as
18 that may be amended from time to time.

19 We think that actually, Your Honor, as a result of
20 the adoption by Congress, during the time this motion was
21 pending before the Court, as the Congress adopted Section
22 1899(g) of the American Recovery and Reinvestment Act of 2009,
23 provides an appropriate resolution of the health care tax
24 credit issue; particularly in light of the fact that it is
25 clearly, in the debtors' view, superior to the COBRA route

1 which would apply to only certain employees and would be much
2 more limited.

3 And oh, by the way, under the terms of our plan,
4 which is why we included the -- we included Supplemental
5 Exhibit number 10, which is -- on page 66 of the plan, which
6 just makes it clear that if there is a COBRA election that they
7 have to withdraw from our plans, they have to go find another
8 plan. Because the continuation plan is an alternative to
9 COBRA. So it only applies to a small group of people, and it
10 also means they have to go find another plan. That COBRA path
11 is not, we think, conducive to the tax credit, preserving the
12 tax credit and maximizing it, this, based on Congress' actions
13 last month.

14 In fact, there will be the opportunity, we believe,
15 if Your Honor enters this order as we're proposing it, we will
16 have, I think, preserved an eighty percent tax credit for these
17 retirees, for the period through the time of the tax credit,
18 which ends currently, as I said, December 31 of 2010.

19 THE COURT: And will there be a fairly plain English
20 notice to people about who would benefit from this and who
21 wouldn't and -- so they can --

22 MR. BUTLER: Not only that, Your Honor. Actually, if
23 you look to paragraph 7, we actually believe, and this is
24 something we're prepared -- this is coming at the debtors'
25 suggestion and at our expense -- we actually believe that

1 people who might not return the continuation elections by March
2 27th, as they're currently required to do under the authority
3 Your Honor has granted us if you make it final; because what
4 happens is if you don't return your election package and
5 authorize us to deduct contributions from the pensions, then
6 you actually come out of the plan on April 1st.

7 We've talked with the company, and in light of all
8 this, the company is asking Your Honor to include in this order
9 paragraph 7 which authorizes us to mail follow-up notice to
10 anyone who didn't make the election. So we're actually going
11 to file what I'd call second chance notice to people saying you
12 did not participate. Here's what happens to you if you don't
13 participate. And oh, by the way, there is this tax credit out
14 here that's been preserved --

15 THE COURT: For certain --

16 MR. BUTLER: -- in this way.

17 THE COURT: -- which would benefit certain classes of
18 people?

19 MR. BUTLER: Right. Well, it actually will
20 benefit -- I mean, as we read the statute, based -- I mean, the
21 Congress had lots of conditions in the code previously. As we
22 read it, the only two conditions that are really necessary to
23 get this eighty percent tax credit is -- and we provided the
24 statute to the Court -- is that this Bankruptcy Court make a
25 finding that the VEBA is authorized to be and directed to be

1 established in the event a triggering event occurs. Those two
2 things happen, you also have to be in PBGC pay status at the
3 time, but the retirees all would be in that situation.

4 So we actually believe that what we should be doing
5 here is we should send a plain English notice, as Your Honor
6 said, to -- we're going to send a plain English notice to all
7 our retirees explaining the results of this hearing as we send
8 them the order that Your Honor chooses to enter. But more
9 importantly, we want to say to everybody who decides not to
10 participate, we want to give them another opportunity and say
11 is this what you really want to do? Think about it. And here
12 are the implications of it. And oh, by the way, if they come
13 back and they make the election, we're asking Your Honor to
14 order here, and we believe in working with our carriers, that
15 if they respond by April 15th we will make the cove -- we will
16 reinstate the coverage retroactively to April 1st. This, in
17 some respects, overrides the plan which doesn't provide for
18 retroactive reinstatement. But we believe in this
19 circumstance -- limited circumstance -- that it's appropriate
20 to do so.

21 Your Honor, the other thing we've done here in
22 paragraph 8 of the proposed order is we have addressed the
23 issue of the retirees' committee, at least the debtors'
24 proposal to the Court in connection with this. We don't
25 believe, Your Honor, when you appointed the retirees'

1 committee, intended the committee to continue to function
2 throughout the balance of this case. They were appointed for a
3 limited purpose. We'd ask Your Honor to find that the purposes
4 that they currently have been appointed for have been satisfied
5 and discharged.

6 But we also thought a great deal about this, and in
7 some respects people may think we're arguing against the
8 debtors' interest. We don't believe so. We think that this is
9 appropriate. And we're proposing to Your Honor that in the
10 interest of justice, that the Court continue the existence of
11 the retirees' committee through a date that's the later of any
12 motion to stay these orders if Your Honor enters them and the
13 date on which the debtors implement the termination actions set
14 forth in this order. So, said another way, the retirees'
15 committee would continue in existence until we actually
16 implement this order. And when I say implement, I mean
17 implement the termination actions.

18 And their authority going forward would be limited to
19 participating in any hearing to stay the implementation of
20 these orders. The debtors believe that if there is a stay
21 hearing, as one is currently scheduled here next Tuesday, on
22 the first order Your Honor entered, that was not filed by the
23 retirees' committee. They weren't authorized to file appeals,
24 but were -- we believe that in any stay hearing here or in the
25 district court or any other court of competent jurisdiction,

1 the retirees' committee ought to be heard. And we think that's
2 fair.

3 And similarly, Your Honor, we have put a provision in
4 here that would authorize them to meet and confer with us and
5 negotiate any implementation arrangements. This is different
6 than the prior order where they'd be trying to modify the
7 order. We're not talking about modifying the order. We're
8 talking about negotiating any additional actions they would
9 like to negotiate with us regarding implementation of the
10 authority granted under these orders to us in exchange for
11 settling out any appeals.

12 So there provides, at least, an alternative dispute
13 resolution mechanism here which we may or may not be able to
14 make use of. I don't know whether these actions, when the
15 retirees' committee has a chance to reflect on all of this,
16 will conclude that the affirmative actions taken unilaterally
17 by the debtors to preserve tax credits and take other things
18 are appropriate, or whether they desire to take other actions.
19 But at least it provides the opportunity for us to have that
20 discussion sanctioned by the Court. And Your Honor would
21 retain jurisdiction to hear anything in connection with them
22 pertaining to this order, including any agreements that might
23 be reached between retirees' committee and the company.

24 The other provision that's not in here which, Your
25 Honor, we would propose to be a new paragraph 4, is to address

1 the issue Mr. Rosenberg and I spoke about before the Court,
2 with the Court, at the last hearing, and it dawned on me late
3 last night that we hadn't actually put anything in writing.
4 And I've shared it with counsel for the creditors' committee as
5 to what we would put in here. And we propose to put a
6 paragraph in that says, "The debtor shall continue to provide
7 benefits for claims incurred by each eligible salaried employee
8 through the cessation date of such retiree's participation in
9 the applicable health care plan, provided that such retiree has
10 timely paid all requisite contributions for the applicable
11 health care plan; and provided further that such retiree shall
12 not be required to file proofs of claims in this Court to
13 implement the terms of this decretal paragraph." So what that
14 says is they don't have to go through a claims process here.
15 You're ordering us to pay through the coverage dates with
16 respect to these parties, and we will continue to do that as we
17 have.

18 THE COURT: Okay.

19 MR. BUTLER: Which was Mr. Rosenberg's concern. And
20 I think putting it in here and indicating that no one has to
21 file anything, should reduce any burden that a retiree might
22 think they otherwise have and provides that they can file -- if
23 the debtors don't do this, they can come to -- the Court's
24 retained jurisdiction, they can come to Your Honor pursuant to
25 your order to the Court here.

1 THE COURT: Okay.

2 MR. BUTLER: Which we think solves that issue. So
3 these are our -- Your Honor, those are the debtors' proposals,
4 the proposed approach in how to implement these matters. We
5 believe that, as I said earlier, the actions that were taken by
6 Congress last month provided a -- clarified a path for us to
7 address the health care tax coverage in an appropriate manner.

8 THE COURT: Okay. Well, let me ask you a question.
9 ON the 29 U.S.C. 1163 point --

10 MR. BUTLER: Right.

11 THE COURT: -- is it the debtors' position that the
12 granting of this motion would not constitute a loss of coverage
13 but would rather be a substantial elimination? It wouldn't be
14 a total loss?

15 MR. BUTLER: Your Honor, actually the way -- first of
16 all, there's not any loss of coverage here in terms of
17 coverage. It's who pays for it. But nonetheless, I think
18 people have -- the employer-paid portion of it is, I think,
19 what people view as substantial loss of coverage. It's the
20 company's view here that particularly as one reads the regs and
21 reads the statute itself, that there is no difference from
22 Congress' intention with respect to, in a bankruptcy
23 proceeding, loss of coverage or substantial loss of coverage.
24 It is a twenty-four month period window, and that's how it has
25 been certainly set forth in the regs and set forth in the

1 statute.

2 In other words, I don't think the retirees' committee
3 can establish any precedent to suggest that outside of that
4 twenty-four month window, that they've been successful in any
5 other case in obtaining a determination that there was a
6 lifetime COBRA coverage. It's just not what the statute says.

7 THE COURT: Okay.

8 MR. CORNELL: May I, Your Honor?

9 THE COURT: Yes.

10 MR. CORNELL: Your Honor, with respect to the order
11 itself, I'll just limit to that, we don't believe, nor do we
12 agree that paragraph 4 ought to be in this order. It's not an
13 issue that right now has been fully vetted. It may be right,
14 it may be wrong, but right now I don't think it has any place
15 in this particular order.

16 With respect to paragraph 8, I understand and
17 appreciate what's going on. It is necessary for the committee
18 to maintain representation for the scope of what we're doing,
19 including the negotiation as we continue to move in that front.
20 We did bring up in our brief the American Recovery and
21 Reinvestment Act of 2009, and we are trying to move along those
22 lines and are actively negotiating with the debtors. So I
23 think there's an appropriate level there. I also don't know
24 how long it's going to take. So to say that ends on April 1st
25 or whenever their termination is that they terminate, I don't

1 think it's exactly correct. If the negotiations are ongoing
2 and there's a mutually beneficial way to maximize that tax
3 credit, I don't think we want to have a date certain.

4 And lastly, Your Honor, if this is the form of the
5 order that would be entered, we'd also like a certification
6 under 28 U.S.C. 158(d)(2)(a) to allow an immediate appeal to
7 the Second Circuit Court of Appeals, based on the importance of
8 this issue and the timing of the termination sought by the
9 debtors. Thank you.

10 THE COURT: Had you all discussed that last point?

11 MR. BUTLER: I don't think they can do that. That's
12 a post BAPCPA -- I don't think they can do that in this -- I
13 mean --

14 THE COURT: Well, it is a BAPCPA change, I just don't
15 know whether it was deemed to be retroactive or not.

16 MR. BUTLER: I don't think it was, Your Honor. I'd
17 have to go back and look.

18 THE COURT: Why don't you save that for Tuesday?

19 MR. CORNELL: Yes, Your Honor.

20 THE COURT: You can raise that Tuesday if, in fact,
21 BAPCPA goes back. This case filed a few days before the --

22 MR. CORNELL: Right. My belief is that this would
23 apply, but we'll raise it on Tuesday.

24 THE COURT: Okay. And you all will have a chance to
25 discuss it too. Maybe you want that, maybe you don't. I don't

1 know.

2 MR. BUTLER: Your Honor, I would just point out in
3 connection with the argument here that the issue of whether our
4 actions created a qualifying event under 29 U.S.C. 1163 was
5 raised by the retirees' committee first by the objectors at the
6 original hearing and then by the retirees' committee in their
7 report.

8 THE COURT: I think it was raised, and it's something
9 I considered. And I believe that the debtors' view of the
10 statute and the regs is correct. But I also think that it's
11 not something I should definitively rule on as if it were a
12 declaratory judgment in a 363(b) proceeding. Part of my ruling
13 is premised upon my belief that you're correct, but I think
14 it's actually very similar to the Orion facts where the Second
15 Circuit said the Court can't be the guarantor of the logic of
16 the motion by actually ruling on something like this. I'm not
17 even sure who the other side would be here. It may be
18 retirees, it may be someone else, so.

19 MR. BUTLER: Your Honor, the other point that I would
20 indicate here is -- and I think this is important, because this
21 may reflect a slightly different view between the committee and
22 us. We believe that the committee's prior charge is completed
23 as of today's hearing. There is nothing left to negotiate in
24 connection with the health care tax coverage, if Your Honor
25 this grants relief, which gives us the right to preserve it

1 under the terms of establishing this VEBA. And similarly, we
2 don't believe the retirees -- while it was our suggestion the
3 retirees' committee continue to operate for a limited period of
4 time, it really is limited, in our view, to the suggested
5 authority here, which is a meet-and-confer authority and the
6 ability to appear at any stay hearing. Your Honor didn't
7 appoint this committee for the purposes of appealing this
8 decision. There are 1600 objectors that can do that. And one
9 of them already has. The Delphi Salaried Retirees Association,
10 which these counsel represent, or I think they do.

11 THE COURT: No, I --

12 MR. BUTLER: They're working together, so.

13 THE COURT: -- I agree with that. I made it clear in
14 my ruling that by appointing the committee, I wasn't precluding
15 appellate rights --

16 MR. BUTLER: Right.

17 THE COURT: -- of those serving on the committee, but
18 I didn't leave the committee out there forever. On the other
19 hand, the stay issue may moot that point anyway, so we'll see
20 that then on Tuesday.

21 All right. I issued an order provisionally approving
22 the debtors' motion for authority to terminate what they refer
23 to as OPEB benefits, employer-paid post retirement health
24 benefits and employer-paid post retirement life insurance
25 benefits for salaried employees on February 25, 2009. That

1 order was provisional in that it contemplated the appointment
2 of a committee of retired employees under my discretionary
3 authority under Section 1114(d), for the limited purposes set
4 forth in that order.

5 The committee was, in fact, promptly appointed and I
6 believe discharged its duties in preparing and filing the
7 report that was contemplated by the order and participating in
8 this hearing with regard to two issues, the first being the
9 further development of the record in respect of whether
10 consistent with my bench ruling, there were any vested salaried
11 OPEB benefits or any evidence suggesting there were any vested
12 salaried OPEB benefits, notwithstanding the debtors' assertion
13 to the contrary and the state of the record at the February
14 hearing.

15 The second purpose was to continue to analyze and
16 discuss with the debtor the possibility of so structuring the
17 termination of OPEB so as to continue to preserve, if possible,
18 a right to any tax credit available, as described in certain of
19 the objections to the original motion. With regard to the
20 latter point, I believe that such discussions occurred and were
21 productive, and the results of those discussions are properly
22 reflected in the proposed order submitted by the debtors.

23 But for the directive of the Second Circuit in the
24 Orion Pictures case, I would conclude in addition that the
25 termination of the debtors' contribution to the salaried OPEB

1 plans, given the time that has passed since the Chapter 11
2 petition date, well over two years in which those benefits were
3 in place, would take it out of the reach of a qualifying event
4 under 29 U.S.C. 1163. My conclusion, as I said during oral
5 argument to that effect, was one of the factors leading me to
6 agree that the debtors' motion satisfied the business judgment
7 requirement of Section 363(b). But I don't believe I can enter
8 a declaratory order. And so that provision of the proposed
9 order will be deleted.

10 With regard to the first charge given to the retirees
11 committee, the retirees submitted a report that essentially
12 made three points. The first is that notwithstanding the
13 Court's bench ruling after the February hearing, the debtors
14 have not clearly established that the GM plan documents
15 precluded vesting for roughly an eleven-year period from 1974
16 to 1985. Secondly, the report contends that there may be some
17 responsibility for Delphi to maintain a salaried OPEB for
18 former employees of, and now retirees of, GM's Frigidaire
19 division, and that the basis for my conclusion on the first
20 point would be inapplicable to such employees because their
21 benefit rights vis-a-vis GM were not addressed in the Sixth
22 Circuit's en banc opinion in Sprague v. General Motors
23 Corporation, 133 F.3d 388 (6th Cir. 1998).

24 Finally, third, the committee contends that there is
25 at least some confusion as to the debtors' responsibility for

1 OPEB for another group of employees who were employees of
2 American Axle and Manufacturing Inc., which was spun off from
3 GM in 1994, before the separation of GM and Delphi. With
4 respect to the first point, as I noted probably too much at
5 length during oral argument, I continue to believe that the
6 Sixth Circuit's Sprague decision is one in which the Sixth
7 Circuit at length determined en banc that there was no
8 ambiguity in respect of GM's reservation of rights to modify at
9 will its welfare plans, including for the period in question,
10 and that were I to conclude otherwise, I would not be doing so
11 by applying a different standard than that which is applied in
12 the Second Circuit under Bouboulis v. Transport Workers Union
13 of America, 442 F.3d. 55 (2nd Cir. 2006), namely that the plan
14 documents contain specific written language that is reasonably
15 susceptible to interpretation as a promise to vest benefits.
16 Language quoted from Devlin v. Empire Blue Cross and Blue
17 Shield 274 F.3d. 76, 84 (2nd Cir. 2001). Instead, what I would
18 be doing would be, in essence, reversing the majority's
19 conclusion in the en banc Sprague opinion that there was no
20 ambiguity in the relevant documents, and that in fact, it was
21 clearly understood that GM had reserved the right to modify.

22 Based on that analysis of the record, which I believe
23 is one that is clearly pointed out as such by the dissent of
24 Chief Judge Martin in that case, I don't believe there's any
25 difference as far as how the Sprague court and the Second

1 Circuit would review the underlying documents. In any event, I
2 believe that that portion of the report went beyond my charge
3 or my assignment to the committee, since it, in essence, sought
4 to reargue my earlier ruling, and in addition sought to suggest
5 that the assumption by Delphi pursuant to the master separation
6 agreement which appears at Exhibit 90 in the U.S. Employee
7 Matters Agreement, which was referred to therein and appears in
8 here most readily at Supplemental Exhibit 4, provided for the
9 transfer to Delphi and the assumption by Delphi of GM's legal
10 responsibilities for such OPEB claims.

11 My conclusion was in February and is now that in
12 assuming such legal responsibilities at the time, Delphi and GM
13 were both fully aware of the Sprague decision which predated
14 these agreements, which found that GM had no legal
15 responsibilities in respect of these claims. And in light of
16 the clear evidence that all of Delphi's plans and all of GM's
17 plans, at least since 1985, contained a clear and unambiguous
18 reservation of the right to terminate, or plan documents
19 contain such reservation, that I cannot ignore the context of
20 the Sprague decision as underlying the parameters of what
21 Delphi actually assumed and what GM transferred to it.

22 I have some serious doubts whether the doctrine of
23 virtual representation would apply here given Taylor v.
24 Sturgell 128 S.Ct. 2161 (2008). However, again, given what
25 Delphi actually agreed to have transferred to it, and the

1 factual findings based on their review of the documents made by
2 the Sprague court, I don't see how I can, at this point,
3 (a) second guess the Sprague court's ruling; and (b) impose on
4 Delphi an obligation that I don't believe existed at the time
5 of the master separation agreement.

6 With regard to the second point, I believe the
7 evidence is clear that Frigidaire ceased being a part of GM
8 many years before the GM business segment that was defined as
9 the Delphi Automotive Systems Business in the master separation
10 agreement and the Delphi business unit in the employee matters
11 agreement, came into existence. Consequently, I don't believe,
12 under the relevant agreements, Delphi would have any obligation
13 to or liability for the salaried OPEB benefits of Frigidaire
14 retirees in that capacity -- in their capacity as Frigidaire
15 retirees.

16 On the third point, I'm satisfied, based on the
17 proffer of testimony and the absence of anything in the record
18 contradicting that proffer, that American Axle, to the
19 contrary, did fall within the definition of Delphi business
20 unit under the U.S. Employee Matters Agreement. Therefore, it
21 would be part of the assumption of liability under the master
22 separation agreement and paragraph 3 of the U.S. Employee
23 Matters Agreement. Based on my review of the committee's
24 report, however, I do not see anything to suggest that those
25 employees had any different rights vis-a-vis GM or Delphi than

1 the employees dealt with in the Sprague decision. And so
2 consequently, as regards their rights versus Delphi -- and I
3 want to be clear, only versus Delphi and not as against GM or
4 American Axle, it appears to me that, again, the debtors have
5 met their burden, which as I stated in my modified ruling is
6 substantial, to show that the salaried OPEB benefits for these
7 retirees are also modifiable or terminable at will.

8 So, in light of that and the absence of any other
9 evidence in respect of, for example, potential different rights
10 based on the Second Circuit's jurisprudence on equitable
11 estoppel -- or promissory estoppel, excuse me, in this area, or
12 potentially with respect to, for example, people on disability
13 in the report, I conclude that the relief granted provisionally
14 with respect to the motion should now be granted on a final
15 basis. So, for those reasons, I will enter, with a couple of
16 modifications, the proposed final order.

17 MR. BUTLER: Thank you, Your Honor.

18 THE COURT: Do you have a disk or something for this
19 order?

20 MR. BUTLER: We'll arrange --

21 THE COURT: I guess I need the language that you --

22 MR. BUTLER: Yes.

23 THE COURT: -- wrote out --

24 MR. BUTLER: I'll get you the language. Do you want
25 us to type it in and e-mail it down, or do you want us just to

1 read the written out language? Which do you prefer, Judge? We
2 have it written out. We can type it in and send it down.

3 THE COURT: Why don't you just hand me what you have
4 written out. Okay. I'm going to take a couple -- there's
5 nothing else on docket --

6 MR. BUTLER: That's it, Your Honor.

7 THE COURT: -- okay. I'm going to take a couple
8 matters out of order, but maybe people want a five minute
9 break. But I'll resume in five minutes with Fred Leighton
10 Holding v. Christie's.

11 MR. BUTLER: Thanks, Judge.

12 (Whereupon these proceedings were concluded at 12:04 p.m.)
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I N D E X

T E S T I M O N Y

WITNESS	EXAM BY	PAGE	LINE
Thomas Smith	Mr. Cornell	37	12
Thomas Smith	Mr. Butler	39	6
Keith Stipp	The Court	40	22

E X H I B I T S

NO.	DESCRIPTION	ID.	EVID.
Supp. 1	Provisional order entered at docket #16380		7, 25
Supp. 2	Supplement and report of retirees' committee		7, 25
Supp. 3	Debtors' response to report of retirees' committee		7, 25
Supp. 4	U.S. Employee Matters Agreement between GM and Delphi dated 12/22/98		7, 25
Supp. 5	Letter from Delphi Corporation that was sent to Delphi Health & Life program participants on 2/26/09		7, 25

I N D E X, cont'd

E X H I B I T S

NO.	DESCRIPTION	ID.	EVID.
Supp. 6	Posting that Delphi Corporation made on its website for these cases		7, 25
Supp. 7	Request of retirees' committee for production of documents received on 2/27/09		7, 25
Supp. 8	Debtors' response to request for production of documents		7, 25
Supp. 9	Debtors' proposed form of salaried OPEB termination order		7, 25
Supp. 10, 11	Certain provisions from the plans having to do with vested companies and the plan acting as a substitute for COBRA		7, 25
Supp. 12	Portions of IRS Code dealing with lifetime COBRA coverage		7, 25

I N D E X, cont'd

E X H I B I T S

NO.	DESCRIPTION	ID.	EVID.
Supp. 13	Relevant portions of IRS Code as amended by stimulus bill passed by Congress in last thirty days which provided certain coverages to health care tax credits		7, 25
Supp. 14	IRS private letter ruling dated 4/22/04		7, 25

R U L I N G S

DESCRIPTION	PAGE	LINE
Provision of proposed order re termination of debtors' contribution to salaried OPEB plans will be deleted	60	8
Debtors' proposed final order entered with modifications as stated on the record	64	15

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

LISA BAR-LEIB

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Mineola, NY 11501

Date: March 13, 2009